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Education for Women
Women's Right to Know

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droit de la famille
Le droit de la femme à savoir

The Crisis of Aboriginal Women Entangled in the Criminal Law

October 31, 2012

Tamar Witelson, Legal Director, METRAC
Christa Big Canoe, Legal Advocacy Director, Aboriginal Legal Services of Toronto

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METRAC

METRAC, the **Metropolitan Action Committee on Violence Against Women and Children**

- works to end violence against women, youth and children
- a not-for-profit, community-based organization

www.metrac.org

METRAC's **Community Justice Program**

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

FLEW, **Family Law Education for Women** in Ontario

- provides information on women's rights and options under Ontario family law
- in 14 languages, accessible formats, online and in print

www.onefamilylaw.ca
<http://undroitdefamille.ca/>

Presenters

Tamar Witelson

Legal Director, METRAC



Christa Big Canoe

Legal Advocacy Director, Aboriginal Legal
Services of Toronto



Topics to be Covered

1. Current Picture – Aboriginal People in the Criminal Law System
2. Root Causes
 - a. Colonial History
 - b. Residential School System
 - c. Lasting Effects
 - d. Additional Marginalization of Aboriginal Women
3. Working with Aboriginal Women in the Criminal Law System
4. *Gladue* Principles
5. Additional Resources

Accurate as of the date of this webinar presentation: October 31, 2012



Current Picture

Current Picture

Aboriginal People in the Criminal Law System

- “Aboriginal” includes First Nation, Inuit, and Metis peoples
- Aboriginal people are:
 - 23% of the people accused of homicide
 - 10 times more likely to be accused of homicide than non-Aboriginal people
 - 4% of Canadian adults AND
 - 20% of all adults in jail
 - 19% of people given a conditional sentence
 - 16% of people on probation
- 74% of Aboriginal people in prison did not have a high school education – compared to 33% of non-Aboriginal inmates
- The proportion of Aboriginal people in custody is increasing

Juristat Vol. 26, no. 3 (June 6, 2006)

Current Picture

Aboriginal People in the Criminal Law System

- 1 in 3 women in federal prison is Aboriginal
- average age of Aboriginal woman inmate is 34 years – five years younger than the average age of non-Aboriginal women inmates
- Aboriginal women are the fastest growing offender population

Juristat Vol. 26, no. 3 (June 6, 2006)



Root Causes

Root Causes

1. Colonial History

- First European settlement
- Europeans asserted political control over Aboriginal nations, lands and people
- Aboriginal people were relocated to reserves
- Disconnection from lands and identity
- *Indian Act* designated certain people as “Indians”
- European policy to “civilize”, assimilate and eradicate Aboriginal identity

Root Causes

1. Colonial History

“I want to get rid of the Indian problem. Our object is to continue until there is not a single Indian in Canada that has not been absorbed. They are a weird and waning race...ready to break out at any moment in savage dances; in wild and desperate orgies.”

- Duncan Campbell Scott, 1920
Deputy Superintendent
Department of Indian Affairs
Government of Canada

Root Causes

2. Residential School System

- Started by churches, taken over by Canadian government
- Operated for more than 100 years
- Last school closed in mid-1990s
- Children taken from communities by threat or force
- Children forced to give up language, culture, tradition
- Children suffered physical, sexual, emotional and psychological abuse

Root Causes

3. Lasting Effects

- Loss of identity
- Loss of parenting skills
- Low education
- High unemployment
- Alcohol/drug/substance abuse
- Violence
- High rate of child protection intervention
- High suicide rate
- Over representation in criminal justice system

Root Causes

4. Additional Marginalization of Women

- Loss of traditional roles in community
- Loss of Indian status for inter-marriage
- Domestic violence
- Women forced to relocate to cities
- Urban barriers to employment and housing
- Racial and sex discrimination
- “squaw” stereotype
- Human trafficking
- Prostitution



Working with Aboriginal Women in the Criminal Law System

Working with Aboriginal Women in the Criminal Law System

Be sensitive to context:

- Colonialization
- Residential Schools
- Oppressive laws and policies
- Marginalization
- High rates of violence
- Combined racism and sexism

Working with Aboriginal Women in the Criminal Law System

Scenario 1:

Julie is a 22-year-old Metis woman who has been charged with assault. At her bail hearing, bail was denied and she will be held in jail until her hearing.

How can you help her?

Working with Aboriginal Women in the Criminal Law System

Best practices:

- Ask prompting questions
- Get the narrative
- Don't make assumptions
- Explain the reason for your questions
- Take time to build trust

Working with Aboriginal Women in the Criminal Law System

Best practices:

- Remember that community is often very significant to Aboriginal people
- Understand criminal issues affect other life issues
- Ask about a person's Aboriginal community
- Learn some background about the community
- Research what resources exist in or near a person's community

Working with Aboriginal Women in the Criminal Law System

Scenario 2:

Nicole is a First Nation woman, convicted of break and enter. She has received a conditional sentence, ordering her to do 240 hours of community service and to attend alcohol and drug addiction therapy.

How can you help?

Working with Aboriginal Women in the Criminal Law System

Best practices:

- Ask about Nicole's community
- Talk about historic and current issues of harm
- Ask about her responsibilities in addition to the court order
- Inquire whether there are services/supports in her community

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Gladue Principles

Gladue Principles

Criminal Code s. 718.2(e)

A court that imposes a sentence shall also take into consideration... all available sanctions other than imprisonment that are reasonable in the circumstances ... for all offenders, with particular attention to the circumstances of aboriginal offenders.

R. v. Gladue, [1999] 1 S.C.R. 688

Section 718.2(e) directs judges to undertake the sentencing of such offenders individually, but also differently, because the circumstances of aboriginal people are unique.

R. v. Ipeelee, 2012 SCC 13

Sentencing judges, as front-line workers in the criminal justice system, are in the best position... to ensure that they are not contributing to ongoing systemic racial discrimination.

Gladue Principles

- Applies to all Aboriginal backgrounds, on/off reserve, rural/urban
- Every time an Aboriginal person before the court might end up in custody
 - Bail
 - Parole
 - Non-criminal matters like fitness hearings; or civil contempt
- *Gladue* Reports (written or verbal)
 - Legacy of dislocation
 - Low income
 - Unemployment
 - Low education
 - Lack of opportunities
 - Substance use
 - Systemic/direct discrimination

Gladue Principles

Gladue (Aboriginal Persons) Court

- Pilot project in the Toronto area
- Available to all Aboriginal persons
- Voluntary
- Court has expertise in services available for Aboriginal persons in Toronto

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Additional Resources

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Aboriginal Legal Services Toronto (ALST)

- www.aboriginallegal.ca/
- Toronto: 416-408-3967 or 416-408-4041

“Are you Aboriginal?”: Information about criminal law issues for Aboriginal Persons

- www.cleo.on.ca/en/publications/gladue

Resources for Aboriginal persons about rights in criminal law

- yourlegalrights.on.ca/criminal-law/aboriginal-rights-in-criminal-law

Additional Resources

Aboriginal Community Resources

Ontario

- <http://chiefs-of-ontario.org/>
- <http://www.aiai.on.ca/>
- <http://www.anishinabek.ca/>
- <http://www.gct3.net/>
- <http://www.nan.on.ca/>
- <http://www.ofifc.org/ofifchome/page/index.htm>
- <http://www.onwa-tbay.ca/>

National Organizations

- <http://www.afn.ca/article.asp?id=3>
- <http://www.nwac-hq.org/en/index.html>
- <http://www.ccab.com/>

Additional Resources (General)

Find a community legal clinic near you

- www.legalaid.on.ca/en/contact/contact.asp?type=cl

Ontario Women's Justice Network (OWJN)

- www.owjn.org

Ontario Justice Education Network

- www.ojen.ca

Additional Resources (General)

Law Society of Upper Canada Lawyer Referral Service

www.lsuc.on.ca/with.aspx?id=697

- Toll-free: 1-800-268-8326
- Toronto: 416-947-3330
- TTY: 416-644-4886

Toolkit for a good Client-Lawyer Relationship

schliferclinic.com/vars/legal/pblo/toolkit.htm

- Barbra Schlifer Commemorative Clinic

Ministry of the Attorney General

www.attorneygeneral.jus.gov.on.ca/english/

- Toll free: 1-800-518-7901
- TTY: 1-877-425-0575

211 Canada.ca

211canada.ca/

Additional Resources (General)

Victim Crisis Assistance and Referral Services (VICARS)

- Immediate, on-site service to victims of crime 24 hours a day, 7 days a week
- Toll-free: 1-888-579-2888
- Toronto: 416-314-2447

Victim Support Line (VSL)

- province-wide, multilingual, toll-free information line providing a range of services to victims of crime
- Services available from 8 a.m. to 10 p.m., 7 days a week in 13 languages
- Toll-free: 1-888-579-2888
- Toronto: 416-314-2447

Court Prep

www.courtprep.ca

- provides information on the Canadian legal system and prepares victims and witnesses to give evidence

Additional Resources (Family)

Assaulted Women's Helpline

www.awhl.org

- Toll-free: 1-866-863-0511; TTY: 1-866-863-7868
- Toronto: 416-863-0511

Legal Aid Ontario

www.legalaid.on.ca/en/getting/default.asp

- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867
- Toronto: 416-979-1446 (accepts collect calls)

Family Law Information Program (FLIP)

www.legalaid.on.ca/en/getting/flip.asp

Family Law Information Centres (FLICs)

www.legalaid.on.ca/en/getting/type_family.asp

Family Law Services Centres (FLSCs)

www.legalaid.on.ca/en/contact/contact.asp?type=flsc

Additional Resources (Family)

FLEW (Family Law Education for Women)

- www.onefamilylaw.ca/en/resources/

FODF (Femmes Ontariennes et Droit de la Famille)

- <http://undroitdefamille.ca/>

Resources for Aboriginal persons about rights in criminal law

- yourlegalrights.on.ca/family-law/aboriginal-rights-in-family-law